

APPLICANTS:
Lawrence & Susanna Kuhn

REQUEST: A variance to permit an existing dwelling and deck to encroach into the required setbacks in the Rural Residential District

HEARING DATE: May 24, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5532

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Lawrence J. Kuhn

CO-APPLICANT: Susanna M. Kuhn

LOCATION: 3912 Buckthorn Court – Section 2 Northampton, Jarrettsville
Tax Map: 24 / Grid: 1D / Parcel: 247 / Lot: 16
Fourth (4th) Election District

ZONING: RR / Rural Residential

REQUEST: A variance, pursuant to Section 267-35(B), Table III, of the Harford County Code, to permit an existing dwelling to encroach into the 50 foot rear yard setback (37 foot setback proposed), and to allow an existing deck, pursuant to Section 267-23C(1)(a)[6], to encroach greater than 25% into the rear yard setback (37.5 foot setback required and 27 foot proposed) in the RR District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is an approximately 3/4 acre lot improved by a two-story colonial type dwelling with an attached rear yard deck. The Applicant Lawrence J. Kuhn testified that he and his wife purchased the subject property in 1989. At that time, the rear deck was existing on the house. At Christmas in the year 2005, the Applicants purchased a hot tub and decided to replace and enlarge the existing deck. At that time, and for the first time, the Applicants learned that the house was not built according to its original site plan. The house was built far behind the existing front setback line with the deck, which was apparently constructed when the house was originally built, situated well within the rear yard setback. Accordingly, the existing deck is and has been for many years in violation, unbeknownst to the Applicants.

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The Applicants, both in testimony and in their application, also assert that their lot is neither square nor rectangular, but is actually triangular. This creates severe limitations on how the property is laid out and how it may be used. The Applicants further rely upon the downward topography of the property along with a drainage swell running through the backyard close to the existing deck in their argument of uniqueness.

According to the Applicants, these features of the lot combine to create a very unusual situation in that the Applicants cannot build a deck as proposed, which is really a replacement of the existing deck, without the variance requested.

Anthony McClune, of the Harford County Department of Planning and Zoning, testified that the lot is at the end of a cul-de-sac, and is very unusually shaped. It is basically a triangular lot, with a steeply descending topography from front to rear. Furthermore, a public sewer line runs through the rear of the property in a dedicated utility easement.

Mr. McClune stated that the house is situated about 13 feet back from the front yard setback line and the initial location of the house may have been related to the original topography of the lot which, in Mr. McClune's opinion, may have been changed by the developer at the time of construction of the house.

No testimony or evidence was given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Photographs and drawings in the file reveal a property which is very unusually configured. The property has approximately 50 feet of frontage on Buckthorn Court, while its rear property line is 260 feet long. The house, perhaps because of the original topography of the lot, is situated well behind the front yard setback line which highly restricts, given the very long rear setback line, the buildable space on the property. The Applicants purchased the property not knowing that the attached rear yard deck was in violation of the existing setback.

The configuration of the property, and the particular location of the house on the lot, is unique. If the house were located closer to the front yard setback line no variance would be necessary.

The Applicants clearly suffer a hardship in that they are unable to replace a deck as it now exists without the requested variance. There would be no impact to the surrounding properties or to the neighborhood if the variance were granted.

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CONCLUSION:

Accordingly, it is found and recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: June 26, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 26, 2006.